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MAY 21 2001

NEW JERSEY BOARD OF
CHIROPRACTIC EXAMINERS

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Division of Law
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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
BOARD OF CHIROPRACTIC EXAMINERS

IN THE MATTER OF THE SUSPENSION :
OR REVOCATION OF THE LICENSE OF :

Michael Capilli, D.C.
License No. MC 4472

Administrative Action

CONSENT ORDER

TO PRACTICE CHIROPRACTIC :
IN THE STATE OF NEW JERSEY :

This matter was opened to the New Jersey State Board of Chiropractic Examiners (hereinafter "the Board") upon receipt of information that Dr. Capilli (hereinafter "Respondent") may have engaged in sexual harassment and/or sexual misconduct with a patient, and with the staff, of the chiropractic practice at which he was employed from 1993 until 1998.

On June 8, 2000, Respondent appeared, together with counsel, Robert Farber, Esq., at an investigative inquiry held by the Board into the matter. Having reviewed the entire record, including the testimony of Respondent at the investigative inquiry and the investigative reports filed by the Enforcement Bureau, it appears to the Board that: the Respondent did, in fact, engage in the sexual harassment of patient T.E. by making inappropriate suggestive remarks to her, and attempting to

solicit a personal social relationship with her, while performing in a professional capacity and in a professional setting. In addition, it appears to the Board that Respondent compounded his harassment of T.E. by using his ability to contact her at home via e-mail, to transmit to her electronically, unwanted and offensive photographs of himself and others in various stages of undress, including complete nudity. This activity, carried on in violation of N.J.A.C. 13:44E-2.3(g), is deemed, pursuant to N.J.A.C. 13:44E-2.3(i), to constitute professional misconduct, and is a basis for disciplinary action pursuant to N.J.S.A. 45:1-21(e).

Furthermore, in his testimony of before the Preliminary Investigation Committee of the Board, Respondent admitted that he had received, from a massage therapist working in his practice, a referral fee of 30% per patient, in violation of N.J.A.C. 13:44E-2.7. Respondent also testified that he had provided chiropractic care to D.R., an employee of the practice, without creating or maintaining any patient records to document said care, in violation of N.J.A.C. 13:44E-2.2. These violations also constitute a basis for disciplinary action, pursuant to N.J.S.A. 45:1-21(h).

It appearing that Respondent desires to resolve this matter without admissions, and without recourse to formal proceedings, and for good cause shown:

IT IS ON THIS 24 DAY OF May, 2001
HEREBY ORDERED AND AGREED THAT:

1. Respondent's license to practice chiropractic shall be, and hereby is, suspended for a period of one (1) year from the date of entry of the within Consent Order; said suspension shall be **stayed** to serve as a period of probation, provided that Respondent adheres fully and completely to the terms and conditions set forth herein.

2. Respondent shall successfully complete and pass the ProBE (Professional Problem Based Ethics) course offered by: The Ethics Group, 89 Summit Avenue, Suite 185, Summit, New Jersey 07901, within the period of probation.

3. Respondent is hereby assessed civil penalties, pursuant to N.J.S.A. 45:1-22, in the amounts of: \$5,000.00 for conduct with respect to the aforesaid violation of N.J.A.C. 13:44E-2.3(g); \$1,000.00 for accepting a referral fee in violation of N.J.A.C. 13:44E-2.7; and \$1,000.00 for failure to create a patient record in violation of N.J.A.C. 13:44E-2.2; for a total penalty in the amount of \$7,000.00. Payment for the civil penalties shall be by certified check or money order made payable to the State of New Jersey, and shall be sent to: Kevin B. Earle, Executive Director, Board of Chiropractic Examiners at 124 Halsey Street, Sixth Floor, P.O. Box 45004, Newark, New Jersey 07101. Subsequent violations will subject Respondent to enhanced penalties pursuant to N.J.S.A. 45:1-25.

4. Respondent is hereby assessed the costs to the State of the investigation in this matter in the amount of \$6,784.33. Payment for the costs shall be submitted by certified check or money order made payable to the State of New Jersey. Payment shall be sent to Kevin B. Earle at the address described in paragraph #3.

5. Respondent's total assessments, in the amount of \$13,784.33, shall be paid as follows: within ten (10) days of signing this Order, Respondent shall pay \$5,000.00 in the manner specified herein. Ninety (90) days thereafter, Respondent shall pay an additional \$3,000.00. One hundred eighty (180) days from the signing of this Order, Respondent shall pay an additional \$3,000.00. The remaining balance of \$2,784.33 shall be paid by Respondent on or before the two

hundred seventieth (270th) day after signing this Order. Failure of the Respondent to timely remit any of the aforesaid payments shall cause the entire balance to immediately become due and owing.

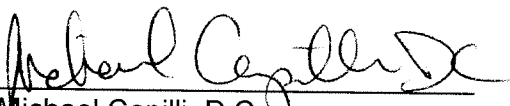
6. Failure to comply with any provisions of this Order or remit any and all payments required by this Order will result in the filing of a certificate of debt and may result in subsequent disciplinary proceedings for failure to comply with an Order of the Board.

NEW JERSEY STATE BOARD OF CHIROPRACTIC EXAMINERS

By:


William F. Winters, D.C.,
Board President

I have read and understand the within Consent Order and agree to be bound by its terms. Consent is hereby given to the Board to enter this Order.


Michael Capilli, D.C.

**DIRECTIVES APPLICABLE TO ANY CHIROPRACTIC BOARD LICENSEE
WHO IS SUSPENDED, REVOKED OR WHOSE SURRENDER OF LICENSURE
HAS BEEN ACCEPTED**

A practitioner whose license is suspended or revoked or whose surrender of license with or without prejudice has been accepted by the Board, shall conduct him/herself as follows:

1. Document Return and Agency Notification

The licensee shall promptly deliver to the Board office at 124 Halsey Street, 6th floor, Newark, New Jersey 07102, the original license and current biennial registration certificate. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of chiropractic in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry. The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee provides health care services. The disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his eligibility to practice is represented. The licensee must also take steps to remove his/her name from professional listings, telephone directories,

professional stationery, or billings. If the licensee's name is utilized in a group practice title, it shall be deleted.

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee who is a shareholder in a professional service corporation organized to engage in the professional practice, whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice within the meaning of the Professional Service Corporation Act. (N.J.S.A. 14A:17-11). A disqualified licensee shall divest him/herself of all financial interest in the professional service corporation pursuant to N.J.S.A. 14A:17-13(c). Such divestiture shall occur within 90 days following the disqualification to own shares in the corporation. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the Secretary of State, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Patient Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to medical records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her medical record or asks that that record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a.) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b.) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Chiropractic Examiners are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a chiropractor:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the Federation of Chiropractic Licensing Boards of the United States, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.

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MICHAEL A. CAPILLI, D.C.

PH. 732-222-2219
10 WEST END CT.
LONG BRANCH, NJ 07740

60-7269/2313

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PAY TO THE
ORDER OF

State of NJ

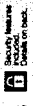
Five thousand & 40/100


\$ 5000.00

DATE

May 15, 2001

DOLLARS



 Sovereign Bank

"Success is confidence. We can help you get there."™

MEMO

Michael A. Capilli, D.C.

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Entrepreneur